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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA
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12 Denard Darnell Neal,)
13)
14) Petitioner,) 2:90-CR-00003-PHX-RCB
15)
16) vs.) O R D E R
17)
18) United States of America,)
19)
20) Respondent.)
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Introduction

Currently pending before the court is a "Motion to Proceed on Appeal In Forma Pauperis [("IFP")] " filed on June 7, 2010, by petitioner *pro se* Denard Darnell Neal (Doc. 227). As explained below, the court lacks jurisdiction to consider this motion; and, in any event, it is now moot.

Background

On May 10, 2010, petitioner filed a Notice of Appeal to the Ninth Circuit Court of Appeals (Doc. 224) of this court's order in Neal v. United States of America, 2010 WL 1752591 (D.Ariz. April

1 29, 2010) (Doc. 223) ("Neal I"¹). By letter filed May 17, 2010,
2 the Ninth Circuit advised petitioner that his payment of the
3 \$455.00 docket fee for his Notice of Appeal was "**past due[,]**" and
4 that he had to "correct th[at] deficiency **within 14 days.**" Doc.
5 226 (emphasis in original). Otherwise, the Circuit Court informed
6 petitioner, his "[f]ailure to respond to th[at] order within the
7 time set out will result in dismissal of the appeal for failure to
8 prosecute." Id. (citation omitted).

9 Petitioner did not follow the Ninth Circuit's unequivocal
10 directions. Instead, on June 7, 2010, he filed in this district
11 court the pending IFP motion. Thereafter, on June 17, 2010, the
12 Ninth Circuit Court of Appeals filed an order noting "that the
13 filing and docketing fees for [petitioner's] appeal remain[ed]
14 due." United States v. Neal, 10-10236 (9th Cir. June 17, 2010)
15 ("Neal I") (Doc. 3-1). The Ninth Circuit thus ordered petitioner
16 "[w]ithin 21 days after the date of th[at] order," to "pay to the
17 district court the \$445.00 filing and docketing fees for this
18 appeal and file in this court [the Ninth Circuit] proof of such
19 payment *or file in this court* [the Ninth Circuit Court of Appeals]
20 *a motion to proceed in forma pauperis.*" Id. (emphasis added). The
21 Ninth Circuit also advised petitioner that "[f]ailure to pay the
22 fees or file a motion to proceed in forma pauperis *shall result in*
23 *the automatic dismissal* of the appeal by the Clerk for failure to
24 prosecute." Id. (citing 9th Cir. R. 42-1) (emphasis added). That

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26 ¹ As this court noted in Neal I, petitioner "is an habitual filer of
27 motions of various kinds all attacking, . . . his 1990 conviction and subsequent
28 sentence in 1991 of 55 years imprisonment for bank robbery and use of a firearm
during a crime of violence." Id. at *1. Hence, use of the designation "Neal I"
is for brevity and in no way correlates to the number of motions which petitioner
has actually filed.

1 order concluded by directing the Clerk to "serve a Form 4 financial
2 affidavit on [petitioner][,]" and that was done. Id., and Doc. 3-
3 2. In fact, after the Ninth Circuit's dismissal of his appeal, on
4 July 21, 2010, petitioner filed that completed affidavit with the
5 Ninth Circuit Court of Appeals. See Neal II, (Doc. 5).

6 When petitioner did not timely comply with the Ninth Circuit's
7 order, on July 14, 2010, it dismissed his appeal for failure to
8 prosecute. Doc. 229. After receiving petitioner's motion to
9 proceed in forma pauperis and accompanying affidavit, on July 27,
10 2010, the Ninth Circuit "construed th[at] motion in part as a
11 motion to reinstate []his appeal." Neal II, Doc. 7. "So
12 construed," the Ninth Circuit granted that motion. Id. The Court
13 thus vacated its July 14, 2010, order dismissing petitioner's
14 appeal for failure to prosecute. See id. The Ninth Circuit
15 further indicated that "[t]he motion to proceed in forma pauperis
16 shall be addressed by separate order[]" of that Court.

17 Discussion

18 The Ninth Circuit's recent reinstatement of petitioner's
19 appeal, especially when coupled with petitioner's pending IFP
20 motion in that Court, divests this court of jurisdiction to
21 consider the IFP motion pending here. See Griggs v. Provident
22 Consumer Discount Co., 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d
23 225 (1982) (per curiam) ("The filing of a notice of appeal is an
24 event of jurisdictional significance—it confers jurisdiction on the
25 court of appeals and divests the district court of its control over
26 those aspects of the case involved in the appeal.") Therefore, the
27 court denies petitioner's pending IFP motion for lack of
28 jurisdiction.

1 Accordingly, the court ORDERS that petitioner's "Motion to
2 Proceed on Appeal In Forma Pauperis" (Doc. 227) is DENIED.

3 DATED this 2nd day of August, 2010.

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8 Robert C. Broomfield
9 Senior United States District Judge
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12 Copies to counsel of record and petitioner *pro se*
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